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Response To Comments On:

Amendments to 310 CMR 7.70:
Regional Greenhouse Gas Initiative Revisions (Useful Net Thermal Output at
Combined Heat and Power Budget Sources)

February, 2017

Regulatory Authority:

M.G.L. c. 111, sections 142A through 142E,
and M.G.L. c. 21N Section 2(a)

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I. Regulation History and Notes

The Regional Greenhouse Gas Initiative (RGGI) is an ongoing effort among nine Northeast and Mid-Atlantic States (six New England states, NY, DE, and MD) to develop and implement a regional CO₂ cap-and-trade program aimed at reducing CO₂ emissions from large fossil-fuel-fired electricity generating units in the region. The regional program is implemented through similar regulations in each of the participating states.

In January of 2008, MassDEP promulgated 310 CMR 7.70¹- The Massachusetts CO₂ Budget Trading Program to establish the rules for implementing the RGGI cap and trade program within the Commonwealth.

In December of 2013, MassDEP amended 310 CMR 7.70 to implement the program changes identified in the 2012 Program Review. These changes included:

- Lowering the MA base budget by 40% for the years 2014-2020,
- Further adjustments to MA base budget for 2014-2020 to account for allowances already held by regulated facilities and private entities,
- A Cost Containment Reserve to mitigate price spikes by providing a limited quantity of allowances in addition to the cap if certain price thresholds are exceeded,
- Updates to the RGGI offsets program, including a new forestry protocol,
- An Interim Compliance Periods to require partial compliance in the first two years of each three year control period, and
- Administrative updates including documents incorporated by reference.

The Massachusetts Department of Environmental Protection (MassDEP) is again amending 310 CMR 7.70. These amendments allow any Combined Heat and Power (CHP) CO₂ Budget Source to deduct the CO₂ emissions associated with the production of useful net thermal energy from the Combined Heat and Power CO₂ Budget Source's compliance obligation. The technical support document that accompanied the regulatory proposal is available at:

<http://www.mass.gov/eea/docs/dep/air/climate/chpruleamendtsd.pdf>

The proposed amendments are part of Governor Baker's Executive Order 562 review process only and do not impose greenhouse gas emissions limit pursuant to M.G.L. c. 21N, § 3(d).

II. Public Comment Process

MassDEP held one public hearing and solicited oral and written comments on the proposed amendments to the 310 CMR 7.70 regulations in accordance with M.G.L. Chapter 30A. On August 2, 2016, MassDEP published in two newspapers, the Boston Globe and the Worcester Telegram and Gazette, notice of the public hearing and public comment period on the proposed regulations and amendments, and notified interested parties via electronic mail on August 2,

¹ <http://www.mass.gov/eea/docs/dep/service/regulations/770reg13.pdf>

2016. The public hearing notice was published in the Massachusetts Register on August 12, 2016. The public hearing was held at MassDEP's Boston office on Thursday, September 8, 2016. The public comment period closed on September 22, 2016. Four commenters, listed at the end of this document, submitted comments.

III. Comments and Responses

A. General Comments

Comment: All commenters supported MassDEP's amendments to allow Combined Heat and Power units to exclude emissions from useful thermal energy from their Regional Greenhouse Gas Initiative ("RGGI") compliance obligation. (AEE, AIE, NECEC, NECHPI, Veolia)

Response: MassDEP appreciates the support.

B. Expiration of Exemption

Comment: One commenter believes that the proposed language related to the "Expiration of Exemption" should be modified. That commenter believes the language regarding the expiration of the exemption should be changed to:

- Remove the linkage between the expiration of the exemption and the expiration of a pre-existing commercial contract.
- Replace the fixed expiration date [2021] with one tied to the effective date of the CPP.

The commenter believes that as long as a CHP unit is producing useful thermal energy, it should qualify for the exemption. (Veolia)

Response: MassDEP agrees with these comments and has removed the expiration of exemption language from the regulation.

IV. List of Commenters

Advanced Energy Economy (AEE)
Alliance for Industrial Efficiency (AIE)
Northeast Clean Energy Council (NECEC)
Northeast Clean Heat and Power Initiative (NECHPI)
Veolia

V. Editorial and Consistency Changes.

In the final regulations, MassDEP made editorial changes to provide clarity of terms and a cleaner text, including clarification of the meaning of useful net thermal energy. In addition, MassDEP modified language to be more consistent with the use of terms and language in other portions of 310 CMR 7.00.